

**Subordinate legislation tabled
between 13 February and
19 March 2013**

Report No. 22
Agriculture, Resources and Environment
Committee
May 2013

Agriculture, Resources and Environment Committee

Chair Mr Ian Rickuss MP, Member for Lockyer
Deputy Chair Ms Jackie Trad MP, Member for South Brisbane
Members Mr Jason Costigan MP, Member for Whitsunday
Mr Sam Cox MP, Member for Thuringowa
Mr Shane Knuth MP, Member for Dalrymple
Mrs Anne Maddern MP, Member for Maryborough
Mr Michael Trout MP, Member for Barron River

Committee Staff Mr Rob Hansen, Research Director
Mr Michael Gorringer, Principal Research Officer
Ms Sarah McCallan, Principal Research Officer
Ms Rhia Campillo, Executive Assistant

Technical Scrutiny Secretariat Ms Renee Easten, Research Director
Ms Marissa Ker, Principal Research Officer
Mr Karl Holden, Principal Research Officer
Ms Tamara Vitale, Executive Assistant

Contact details Agriculture, Resources and Environment Committee
Parliament House
George Street
Brisbane Qld 4000

Telephone +61 7 3406 7908

Fax +61 7 3406 7070

Email AREC@parliament.qld.gov.au

Web www.parliament.qld.gov.au/AREC

1 Introduction

1.1 Role of the Committee

The Agriculture, Resources and Environment Committee (the committee) is a portfolio committee established by the Legislative Assembly on 18 May 2012 under the *Parliament of Queensland Act 2001*.¹ It consists of government and non-government members. The committee's primary areas of responsibility are: the Department of Agriculture, Fisheries and Forestry; the Department of Environment and Heritage Protection; and the Department of Natural Resources and Mines.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each Bill and item of subordinate legislation in its portfolio area to consider –

- a) the policy to be given effect by the legislation;
- b) the application of fundamental legislative principles to the legislation; and
- c) for subordinate legislation – its lawfulness.

1.2 Aim of this report

This report advises of subordinate legislation examined and, where applicable, presents any concerns the committee has identified in respect of subordinate legislation tabled between 13 February and 19 March that are within its portfolio responsibilities. Unless expressly noted below, no issues were identified.

SL No	Subordinate Legislation	Tabled Date	Disallowance Date
19	Rural and Regional Adjustment Amendment Regulation (No.1) 2013	5 March 2013	23 May 2013
20	Aboriginal Land Amendment Regulation (No.1) 2013	5 March 2013	23 May 2013
23	Animal Care and Protection Amendment Regulation (No.1) 2013	5 March 2013	23 May 2013
24	Proclamation made under the Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012	5 March 2013	23 May 2013
25	Environmental Protection and Other Legislation Amendment Regulation (No.1) 2013	5 March 2013	23 May 2013
26	Rural and Regional Adjustment Amendment Regulation (No.2) 2013	5 March 2013	23 May 2013
27	Fisheries Amendment Regulation (No.1) 2013	19 March 2013	6 June 2013
32	Plant Protection Amendment Regulation (No.1) 2013	19 March 2013	6 June 2013
33	Nature Conservation (Protected Plants Harvest Period) Notice 2013	19 March 2013	6 June 2013

¹ *Parliament of Queensland Act 2001*, s.88 and Standing Order 194.

2 Issues identified in particular subordinate legislation

2.1 SL 25 Environmental Protection and Other Legislation Amendment Regulation (No.1) 2013

The Environmental Protection and Other Legislation Amendment Regulation (No. 1) 2013 aims to reduce regulatory burdens and costs on business, in particular by decreasing the number of environmentally relevant activities (ERAs) that require an environmental authority (e.g. an approval).

Legislative Standards Act 1992, section 4(2)(a) – Sufficient regard to rights and liberties of individuals

The committee notes that section 74 of the Amendment Regulation amends Schedule 10 to the Regulation to introduce some new fees for new types of applications relating to environmental authorities (i.e. an approval for an ERA). These new fees range from a \$110.40 for a transfer application for an environmental authority, to \$1,102 for an application to become an auditor.

The new fees are in keeping with the existing fees in the Regulation. They are also not considered to have a significant detrimental effect on businesses and reflect the administrative cost to the department of processing applications.

The new fees need to be seen in the light of the significant reduction in costs to businesses brought about by the Amendment Act and Amendment Regulation. The explanatory notes state that deleting 20 ERA thresholds would result in 9,420 small business operators no longer being required to hold an approval, saving an estimated \$6.18 million in annual fees. The explanatory notes also state that halving fees for small sewage treatment plants will lead to savings of greater than \$0.34 million per annum.

2.2 SL 33 Nature Conservation (Protected Plants Harvest Period) Notice 2013

The Nature Conservation (Protected Plants Harvest Period) Notice 2013 (the Notice) provides that the chief executive may, by written notice (known as a harvest period notice) declare a harvest period for a protected plant. The objective of the regulation is to notify a harvest period from 1 April 2013 to 31 March 2014 for certain protected plants and specify appropriate restrictions for the commercial and recreational harvest of those plants.

Legislative Standards Act 1992, section 4(2)(a) & (3)(k) – Sufficient regard for the rights and liberties of individuals, legislation unambiguous and drafted in a sufficiently clear and precise way.

‘Protected plant’ is defined in Schedule 3 to the Nature Conservation (Protected Plants) Conservation Plan 2000 (the Plan) as ‘endangered, vulnerable, near threatened or least concern plant’.

Section 3 of the Nature Conservation (Protected Plants Harvest Period) Notice 2013 provides for the definition of protected plant to as ‘a plant that is endangered wildlife, vulnerable wildlife, near threatened wildlife or least concern wildlife’.

Each definition of ‘protected plant’ is clearly and unambiguously drafted, however, the definitions are inconsistent with one another. Some may find the use of term ‘wildlife’, a term that relates to animals, plants, protista, prokaryote and viruses, in the definition contained in the Notice as the Notice only relates to the harvest periods for protected plants.

Committee’s request for advice:

The committee raised the same issue with the then Department of Environment and Heritage Protection, when considering the earlier Nature Conservation (Protected Plants Harvest Period) Notice 2012.²

² Agriculture, Resources and Environment Committee, Report No. 6 on Subordinate Legislation, August 2012, pp 2-3.

The committee asked the department to confirm whether an amendment should be made to ensure that the definition provided for in the Notice is consistent with the definition contained in the Plan. In response, the department advised the committee that an amendment would be made to ensure the definition of 'protected plant' contained in the Nature Conservation (Protected Plants Harvest Period) Notice 2012 was consistent with the definition contained in the Plan.

However, as indicated above, upon reviewing the 2013 Notice, the amendment has not been made.

The department's advice:

In response to the committee's request, the department advised that it further considered whether an amendment should be made and concluded that, as the term 'wildlife' encompasses both flora and fauna, the use of 'plant' and 'wildlife' to describe the same thing in separate documents, is technically correct.

The department considers that for the sake of clarity, it is desirable that the same term be used in both documents.

The department advised that the ambiguity between the definitions will be resolved in the process of the current reforms to the protected plants legislative framework that will repeal subordinate legislation including the Nature Conservation (Protected Plants Harvest Period) Notice 2013 and the Nature Conservation (Protected Plants) Conservation Plan 2000.

The department anticipates that a new regulatory framework will be in place by January 2014 and that relevant provisions of harvest regulation will be reviewed and moved into the Nature Conservation (Wildlife Management) Regulation 2006.

Committee comment:

The committee thanks the department for its response and is satisfied that the issue will be resolved during the reform of the protected plants legislative framework and that there are no further issues regarding the application of fundamental legislative principles.

3 Recommendation

Recommendation 1

The committee recommends that the Legislative Assembly note this report and the committee's conclusion that subordinate legislation nos. 19-20; 23-27; and 32-33 raise no issues regarding the application of fundamental legislative principles.



Ian Rickuss MP
Chair
May 2013